

1 THE HONORABLE JOHN C. COUGHENOUR

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7 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

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9 FEDERAL TRADE COMMISSION,

10 Plaintiff,

11 v.

12 AMAZON.COM, INC.,

13 Defendant.  
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Case No. 2:14-cv-01038-JCC

**[STIPULATED] PROTECTIVE  
ORDER**

16  
17 1. PURPOSES AND LIMITATIONS

18 Discovery in this action is likely to involve production of confidential, proprietary, or  
19 private information for which special protection may be warranted. Accordingly, the parties  
20 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The  
21 parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket  
22 protection on all disclosures or responses to discovery, the protection it affords from public  
23 disclosure and use extends only to the limited information or items that are entitled to  
24 confidential treatment under the applicable legal principles, and it does not presumptively entitle  
25 parties to file confidential information under seal.

26 **[STIPULATED] PROTECTIVE ORDER**

Case No. 2:14-cv-01038-MJP

2. “CONFIDENTIAL” MATERIAL

“Confidential” material shall include the following documents and tangible things produced or otherwise exchanged: Sensitive Personal Information and Confidential Business Information, as defined below.

“Sensitive Personal Information” means the following identifying information: (a) names, addresses, phone numbers, and e-mail addresses of Amazon customers, (b) Social Security numbers, (c) sensitive health-related data including medical records, (d) biometric identifiers; (e) date of birth, (f) driver’s license or other state identification numbers, or foreign equivalents, (g) military identification numbers, (h) passport numbers, (i) financial institution account numbers, (j) credit or debit card numbers; or (k) other sensitive information relating to an individual entitled to confidential status under applicable law, by order of this Court, or by agreement of the parties.

“Confidential Business Information” means (i) any individual or aggregated financial data, analyses, or information; (ii) individual or aggregated customer or business data, analyses, or information; (iii) proposals or suggestions for future products, future business practices, overall strategy for the business as a whole and/or any of its units; (iv) five-year plans and/or any such aspirational or planning documents, or any similar strategic-based data, analyses, or information that is used by Amazon in, or pertaining to, its business *provided that* such data, analyses, or information described in parts (i) through (iv) is not generally known and/or which Amazon would normally not reveal to third parties or would require third parties to maintain in confidence because Amazon reasonably believes that such data, analyses, or information might be injurious to Amazon’s business interests, and includes a trade secret or confidential research, development, business, or commercial information that would not normally be revealed to another as set forth in Fed. R. Civ. P. 26(c)(1)(G).

[STIPULATED] PROTECTIVE ORDER  
Case No. 2:14-cv-01038-MJP

1 3. SCOPE

2 The protections conferred by this agreement cover not only Confidential material (as  
3 defined above), but also (1) any information copied or extracted from Confidential material; (2)  
4 all copies, excerpts, summaries, or compilations of Confidential material; and (3) any testimony,  
5 conversations, or presentations by parties or their counsel that might reveal Confidential  
6 material. However, the protections conferred by this agreement do not cover information that is  
7 in the public domain or becomes part of the public domain through trial or otherwise.

8 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

9 4.1 Basic Principles. A receiving party may use Confidential material that is disclosed  
10 or produced by another party or by a non-party in connection with this case only for prosecuting,  
11 defending, or attempting to settle this litigation. Provided, however, that the Commission may,  
12 subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose  
13 Confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal  
14 Trade Commission Act; or any other legal obligation imposed upon the Commission.  
15 Confidential material may be disclosed only to the categories of persons and under the conditions  
16 described in this agreement. Confidential material must be stored and maintained by a receiving  
17 party at a location and in a secure manner that ensures that access is limited to the persons  
18 authorized under this agreement.

19 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
20 ordered by the court or permitted in writing by the designating party, a receiving party may  
21 disclose any Confidential material only to:

22 (a) the receiving party's counsel of record in this action, as well as agents or employees  
23 of counsel who are assisting counsel with the litigation and to whom it is reasonably necessary to  
24 disclose the information for this litigation;

25 (b) the officers, directors, and employees (including in house counsel) of the  
26 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties

1 agree that a particular document or material produced is for Attorney's Eyes Only and is so  
2 designated;

3 (c) experts and consultants to whom disclosure is reasonably necessary for this  
4 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

5 (d) the court, court personnel, and court reporters and their staff;

6 (e) copy or imaging services retained by counsel to assist in the duplication of  
7 Confidential material, provided that counsel for the party retaining the copy or imaging service  
8 instructs the service not to disclose any Confidential material to third parties and to immediately  
9 return all originals and copies of any Confidential material;

10 (f) the author or recipient of a document containing the information, an employee, officer,  
11 or director of the corporate party (including its affiliates, parents, and subsidiaries) that produced  
12 a document containing the information, or a custodian or other person who otherwise possessed  
13 or knew the information; Provided, however, that the Commission may, subject to taking  
14 appropriate steps to preserve the confidentiality of such material, use or disclose Confidential  
15 material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade  
16 Commission Act; or any other legal obligation imposed upon the Commission.

17 4.3 Filing Confidential Material. The burden of demonstrating that any specific information  
18 or document is Confidential is on the party claiming its confidentiality, even if the objecting  
19 party files a motion to challenge the designation of confidentiality. Upon reasonable notice and  
20 request by a filing party, the designating party shall meet and confer with the filing party at least  
21 one day in advance of a filing that contains, discusses, or references Confidential material to  
22 determine whether the designating party will remove the confidential designation, whether the  
23 document can be redacted, or whether a motion to seal or stipulation and proposed order is  
24 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the  
25 standards that will be applied when a party seeks permission from the Court to file material  
26 under seal.

1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party  
3 or non-party that designates information or items for protection under this agreement must take  
4 care to limit any such designation to specific material that qualifies under the appropriate  
5 standards. The designating party must designate for protection only those parts of material,  
6 documents, items, or oral or written communications that qualify, so that other portions of the  
7 material, documents, items, or communications for which protection is not warranted are not  
8 swept unjustifiably within the ambit of this agreement.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
10 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
11 unnecessarily encumber or delay the case development process or to impose unnecessary  
12 expenses and burdens on other parties) expose the designating party to sanctions.

13 If it comes to a designating party's attention that information or items that it designated  
14 for protection do not qualify for protection, the designating party must promptly notify all other  
15 parties that it is withdrawing the mistaken designation.

16 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
17 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or  
18 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
19 be clearly so designated before or when the material is disclosed or produced.

20 (a) Information in documentary form: (e.g., paper or electronic documents and  
21 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),  
22 the designating party must affix the word "CONFIDENTIAL" to each page that contains  
23 Confidential material. If only a portion or portions of the material on a page qualifies for  
24 protection, the producing party also must clearly identify the protected portion(s) (e.g., by  
25 making appropriate markings in the margins).

26 (b) Testimony given in deposition or in other pretrial or trial proceedings: the

1 parties must identify on the record, during the deposition, hearing, or other proceeding, all  
2 protected testimony, without prejudice to their right to so designate other testimony after  
3 reviewing the transcript. Any party or non-party may, within fifteen days after receiving a  
4 deposition transcript, designate portions of the transcript, or exhibits thereto, as Confidential. All  
5 deposition testimony shall be treated as Confidential until the expiration of the 15 day period to  
6 designate portions as Confidential.

7 (c) Other tangible items: the producing party must affix in a prominent place on  
8 the exterior of the container or containers in which the information or item is stored the word  
9 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,  
10 the producing party, to the extent practicable, shall identify the protected portion(s).

11 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
12 designate qualified information or items does not, standing alone, waive the designating party’s  
13 right to secure protection under this agreement for such material. Upon timely correction of a  
14 designation, the receiving party must make reasonable efforts to ensure that the material is  
15 treated in accordance with the provisions of this agreement.

## 16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Except as addressed in Section 4.3, which controls the timing  
18 and sequence of confidentiality challenges for court filings, any party or non-party may  
19 challenge a designation of confidentiality at any time. Unless a prompt challenge to a designating  
20 party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness,  
21 unnecessary economic burdens, or a significant disruption or delay of the litigation, a party does  
22 not waive its right to challenge a confidentiality designation by electing not to mount a challenge  
23 promptly after the original designation is disclosed.

24 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
25 regarding confidential designations without court involvement. Any motion regarding  
26 confidential designations or for a protective order must include a certification, in the motion or in

1 a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
2 conference with other affected parties in an effort to resolve the dispute without court action. The  
3 certification must list the date, manner, and participants to the conference. A good faith effort to  
4 confer requires a face-to-face meeting or a telephone conference.

5 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court  
6 intervention, other than in the circumstances addressed in Section 4.3, which controls the timing  
7 and sequence of confidentiality challenges for court filings, the designating party may file and  
8 serve a motion to retain confidentiality under Local Civil Rule 7 (and in compliance with Local  
9 Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall be on the  
10 designating party. Frivolous challenges, and those made for an improper purpose (e.g., to harass  
11 or impose unnecessary expenses and burdens on other parties) may expose the challenging party  
12 to sanctions. All parties shall continue to maintain the material in question as confidential until  
13 the court rules on the challenge.

14 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
15 LITIGATION

16 If a party is served with a subpoena or a court order issued in other litigation that compels  
17 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that  
18 party must:

19 (a) promptly notify the designating party in writing and include a copy of the  
20 subpoena or court order;

21 (b) promptly notify in writing the party who caused the subpoena or order to  
22 issue in the other litigation that some or all of the material covered by the subpoena or order is  
23 subject to this agreement. Such notification shall include a copy of this agreement; and

24 (c) cooperate with respect to all reasonable procedures sought to be pursued by  
25 the designating party whose Confidential material may be affected, including not producing the  
26 designating party’s documents absent a court order to do so if that party objects to disclosure,

provided that the designating party moves for relief within seven (7) days of receiving the notice under 7(a).

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed Confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in the parties' Agreement Regarding Discovery of Electronically Stored Information and Order.

10. NON TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, the Commission shall retain, return, or destroy Confidential materials in accordance with Rule 4.12 of the Commission's Rules of Practice, and each other receiving party must return all Confidential material to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain confidential material.



1           The confidentiality obligations imposed by this agreement shall remain in effect until a  
2 designating party agrees otherwise in writing or a court orders otherwise.

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4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5 Dated: January 6, 2015

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7 FEDERAL TRADE COMMISSION

8  
9 s/ Jason Adler

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Case No. 2:14-cv-01038-MJP

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13 Attorneys for Defendant Amazon.com, Inc.

14  
15 PURSUANT TO STIPULATION, IT IS SO ORDERED.

16 DATED: \_\_\_\_\_

The Honorable John C. Coughenour  
United States District Judge